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CURRENT TOPICS

Trial by Jury

BY virtue of his seniority and of his great experience as counsel and as judge in civil and criminal cases, Sir TRAVERS HUMPHREYS' opinion on anything connected with the administration of justice deserves careful attention. In an article entitled "Trial by Jury" in the *Sunday Dispatch* of 17th March he lent the considerable weight of his authority in support of the recent resolution of the General Council of the Bar "that the time has now come when the right of litigants to have their cases tried by judge and jury should be fully restored." The two salient facts of the situation were picked out by Sir Travers Humphreys. The first was the Administration of Justice Act, 1939, which virtually abolished trial by jury for the period of the emergency. The second was that for some years before the war jury cases had become the exception rather than the rule, owing to the fact that since 1933 a plaintiff who desired a trial by jury "had to show some very exceptional circumstances before he stood much chance of his request being granted in the face of opposition by the other party." This, of course, did not include the few issues like fraud and breach of promise where jury trial was a matter of right. Sir Travers Humphreys wrote that he had discussed the matter with lawyers of other nations and he had found something like unanimous surprise "that we, the great upholders of trial by jury, have nothing better to offer the litigant than a tribunal consisting of a single lawyer." He expressed the view that "judges for law and juries for fact" was a sound rule. Practice at the Bar was no doubt a good preparation for the detection of lying, but in the majority of civil cases conflicts of evidence were due to honest mistake rather than lying. As to problems of damages which were at large, there was no general satisfaction with the awards of judges. The Court of Appeal steadily refused to interfere with the amount of damages awarded by a jury, but felt at liberty to reverse the decision of a judge who took a wrong view of the facts. Many lawyers will find Sir Travers Humphreys' logic unanswerable, and will agree that the time has come to repeal the emergency provisions and reverse the unfortunate pre-war tendency away from trial by jury.

Payment of Jurors

SOME questions which will arise for consideration when the right of trial by jury is restored were referred to by Mr. J. P. EDDY, K.C., in a letter to the *Sunday Times* of 24th March. He expressed the hope that when juries came back they would not be divided, as they were before the war, into special and common juries. He wrote that there should be one class of jurors for civil actions, as there is for criminal cases. Another hope expressed by Mr. Eddy was that at long last something should be done about the question of the payment of jurors. Before the war, he pointed out, it was the established practice to pay a special juror a fee of one guinea for each case in which he was sworn. A common juror received the pitiful sum of one shilling for each case tried in London at the High Court and eightpence for each case tried on circuit. The juror summoned to try criminal cases—who often had to travel a considerable distance to an assize town and remain there for days on end—received nothing. Mr. Eddy recalled that as far back as 1913 a departmental committee reported in favour of payment by the State of out-of-pocket expenses to all jurymen summoned, whether called into the box or not. The amounts proposed were two shillings for subsistence to each juror who could not return home for meals, an allowance of travelling expenses for every juror coming from a greater distance than three miles from the court and the cost of a night's lodging to each juror who could prove it impossible to return to his home. As Mr. Eddy wrote, even on that modest report no action appears to have been taken. In common justice something should now be done. If Members of Parliament who choose their careers voluntarily are to be adequately paid, how much stronger is the case of jurors, who are compelled to give their services.

Jurisprudence and the Practising Lawyer

PROFESSOR A. H. CAMPBELL, B.C.L. (Oxon), M.A., Professor of Public Law in the University of Edinburgh, gave an address to the Stair Society at its annual meeting on 18th January, 1946, choosing as his subject "The use of jurisprudence." Practising lawyers are not accustomed to consider the subject of jurisprudence to be in the slightest degree useful. Dicey quite rightly said, and the lecturer quoted him as saying: "Jurisprudence is a word which stinks in the nostrils of a practising barrister." Professor Campbell asked the pertinent question: "How can jurisprudence, or the general science of law serve the practising lawyer and legal scholar?" We are indebted to the *Scots Law Times*, for 9th February, 1946, for a full report of the Professor's answers to this question. So far as the practising lawyer is concerned, his answers are: (1) It is necessary for him to be able to analyse the terms he uses; (2) "in these days of revolutionary changes both in international affairs and in the organisation of social life within the State, it is particularly important that the lawyer should reflect on the nature of law and the proper function of law in the life of the community." As an example of the importance of analysing and understanding legal terms, he instanced the argument of Sir John Simon (as he then was) in *Sorrell* v. *Smith* [1925] A.C. 700, which depended on a double meaning of the word "right." Lord Dunedin, he said, was quick enough to detect the fallacy. Unless a lawyer aspires to no better

position in the community than that of a skilled craftsman, it behoves him to take stock of the assumptions on which his activities are based. No better aid towards this end can be found than the efficient teaching of jurisprudence in the universities and law schools.

Property Law in U.S.S.R.

WE do not hear as much as we should like about life in the U.S.S.R. which is and must be a subject of compelling interest to the ordinary citizen of this country. In legal matters also, our two countries can learn from each other, and for that reason we welcome the publication, by *Soviet News*, of a small shilling booklet on "Property Rights of Soviet Citizens," by MIKHAIL SEMYONOVITH LIPETSKER. The author graduated from Moscow University in 1927, and for a number of years was legal adviser to the All-Union Textile Syndicate, the People's Commissariat of Light Industries of the U.S.S.R. and other bodies. He later became senior councillor to the Central Arbitration Authority. Since 1931 he has devoted himself to teaching. The booklet opens, as might be expected, with an eulogy of the success of the Soviet planned economy in peace and in war. Private enterprise is permitted but must be carried on without hired labour, so that in 1938 only 5.6 per cent. of the population were so engaged. The right of property, however, the booklet states, is the most extensive of Soviet civil rights, and is fully protected by the State. The primary attributes of the property right are possession, use and disposition. The owners' rights of user are restricted, as he may not jeopardise State interests by such user, or the interests of other individuals, nor may an owner use his property for speculative purposes or to derive unearned income from it. Apart from these restrictions the owner has a very wide freedom of action with regard to his property. It is interesting that, while private property is adequately protected by law against theft, embezzlement and robbery, the penalties for these offences against State property are more rigorous than for those against private property. We are grateful for the opportunity of learning something about a great ally to whose efforts the causes of victory and peace owe so much.

The Manchester and Salford Poor Man's Lawyer Association

THE annual report for 1944–45 of the committee of the Manchester and Salford Poor Man's Lawyer Association shows that matrimonial and family troubles, which formed 40·0 per cent. of the cases in 1943–44, fell to 37·8 per cent. in 1944–45. Landlord and tenant cases rose from 8·4 per cent. to 9·8 in 1944–45. Other categories of cases did not show any great change in 1944–45. The report expresses the hope that the Rushcliffe Committee's recommendations, when put into practice, will not sound the death knell of the opportunities for social service afforded to the legal profession in the past by Poor Persons Committees and Poor Man's Lawyer organisations. The report also emphasises the existence of the committee's "Cases Fund." The whole of the funds of the Association are available for the guarantee of court fees, and, in proper cases, medical witnesses' fees, subject only to the safeguard that a short résumé of the facts must be submitted to the secretary of the association before any expense is incurred. This résumé is considered by a small sub-committee of the association and in the vast majority of cases the solicitor is given the guarantee for which he asks. The committee express their renewed thanks to those solicitors who continue to act as advocates in the Manchester Justices' Courts on the rota of solicitors formed for that purpose in 1939.

Cruelty in a Husband's Petition

THERE is no technical obstacle in the way of a husband putting forward cruelty as a ground of petitioning for divorce, but it is unusual, perhaps, because of the general belief as to the physical superiority of the male. "Conduct of such a character as to cause danger to . . . health, bodily or mental, or such as to give rise to a reasonable apprehension of such danger" (*Russell* v. *Russell* [1897] A.C. 395) may be attributed to wives as well as husbands, especially in cases where a series of acts which, trivial when taken by themselves, become cruel by their systematic character (*Kelly* v. *Kelly*, L.R. 2 P. & D. 31). A case in the Second Division of the Edinburgh Court of Session, *Thomas* v. *Thomas*, reported in the *Scots Law Times* for 9th March, 1946, sheds an interesting light on this aspect of the law of marital relations. Counsel for the appellant argued that the conduct of a wife towards her husband required to be judged on the same criteria as that of a husband towards his wife (*Main* v. *Main* (1945), S.L.T. 276), and that in so judging, it was relevant for the court to consider whether the wife's safety might be endangered if the husband were provoked to retaliate. In his judgment, LORD MACKAY said that reliance had been placed on the argument that the wife was the weaker vessel and physically less robust in many cases than the male in any physical encounter, and that such reliance was overdone. He said: "With the great changes in physical and social training and the growing diminution of the older physical dominance used by husbands and a corresponding preponderance of the equally effective mental weapons, there has come about a marked transference of the power to wreck a spousal life to the so-called weaker sex; and the existence of a physical power to quell (say) half-hysterical conduct has become now very much a matter of fact for each particular couple." Lord Mackay held, following *Main* v. *Main* (above), that conduct which was cruelty when practised by a husband against his wife was equally cruelty when practised by a wife against a husband.

Trading with the Enemy: Specified Persons

AFTER representations by the Council of The Law Society, the Board of Trade have reviewed their policy in connection with the issue of authorities under s. 1 (2) of the Trading with the Enemy Act, 1939, to solicitors to have dealings with clients who are on the list of persons specified as enemies under the Act. The *Law Society's Gazette* for February announces that the Board are now prepared to authorise solicitors to act for such persons in connection with applications for deletion of their names from the list. Authorities so given, it is stated, will permit negotiations with such persons for this purpose, and require the submission of the application through the representative of H.M. Government in the country in which such persons reside or carry on business. Applications for such authorities should be addressed to the Trading with the Enemy Department, 24 Kingsway, London, W.C.2. A committee gives advice as to the compilation of the statutory list of persons specified as enemies under the Act. Its present chairman is one of the Lords Justices of Appeal. Its function is, however, solely advisory and is in no way comparable to a court of law. Correspondence relating to the committee's procedure or matters under its consideration should be addressed to the committee, and not to the Board of Trade.

Recent Decisions

On 19th March (*The Times*, 20th March) ATKINSON, J., held that, in assessing loss of earnings in an action for damages for personal injuries arising out of the defendants' alleged negligence, the actual gross weekly sum earned must be regarded, and not the net sum after deduction of income tax under the "pay as you earn" system.

In *Lever Brothers and Unilever, Ltd.* v. *Inland Revenue Commissioners*, on 22nd March (*The Times*, 23rd March), the House of Lords (LORD SIMON, LORD THANKERTON, LORD WRIGHT, LORD PORTER and LORD UTHWATT) held that two sums of £131,196 and £895,329, paid in a tax year by the appellant and its subsidiary companies to the trustees of a superannuation fund, should be deducted when computing the appellant's capital for the purposes of excess profits tax because it did not by contributing to the superannuation fund acquire any capital asset, there being no contractual relation created by the trust which could be enforced by the settlor and no resulting trust, except one "of such a remote nature and so unlikely ever to produce any concrete result as would give no right of enforcement." The company had, therefore, lost capital which was not replaced by "new capital employed in its trade or business."

COMPANY LAW AND PRACTICE

RIGHTS OF PREFERENCE SHAREHOLDERS TO ARREARS OF DIVIDEND IN A WINDING-UP

THERE is a comparatively large number of decided cases on the question of the rights of preference shareholders in a winding-up, and I do not propose in this article to attempt to discuss them all or to refer to all the points which have from time to time arisen for decision in connection with this topic. The draftsman who to-day is framing the clauses in the memorandum or (more probably) the articles of association, which are to define the rights to be attached to preference shares, has the assistance of numerous decided cases in determining what are the appropriate words to use to confer the rights required in his particular case; and perhaps the most valuable lesson to be learnt from the decisions is to leave nothing unexpressed, or, to put it in a more positive way, to give an exhaustive definition or description of the rights. If anything is left unsaid there is a real possibility that at some stage of the company's history a dispute will arise as to whether the rights expressly given are exhaustive or are simply the priority rights of the preference shareholders, in which latter case they may be entitled to something over and above what is expressly conferred. Perhaps the most usual case of this is where the relevant provisions of the memorandum and articles give the express right to a preferential dividend, and to repayment of capital in a winding up before anything is paid to the ordinary shareholders; but beyond this the provisions are silent, so that there is nothing expressed to say whether they are to be entitled to participate with the ordinary shareholders in any surplus assets remaining after the ordinary share capital has been returned. In such a case the court has to scrutinise what is said and decide as a matter of construction whether that exhaustively delimits the rights of the preference shareholders, or whether it states simply their preferential rights, so that they still have an unexpressed right to a share in surplus assets. The principle applied by the court in such a case is that subject to the provisions, on their true construction, of the memorandum and articles of association, "all shareholders are entitled to equal treatment unless and to the extent that their rights in this respect are modified by the contract under which they hold their shares" (*per* Astbury, J., in *Re Fraser & Chalmers, Ltd.* [1919] 2 Ch. 114, at p. 120). The earlier authorities on the point are discussed in *Colleroy Coy., Ltd.* v. *Giffard* [1928] Ch. 144, and there is the more recent decision in *Re William Metcalfe & Sons, Ltd.* [1933] Ch. 142; but in all the cases it will be found that the decision depends on the construction of the particular memorandum and articles, and, as I have suggested, the practical lesson to be drawn is to preclude any doubt by providing expressly either that the preference shareholders are to have no further right to participate in the assets in a winding-up after they have received their capital, or that they are to have such a right and to what extent.

A similar question is liable to arise in regard to arrears of dividend where the shares are cumulative preference shares, and where the memorandum and articles make no express provision for payment in a liquidation of arrears of dividend on the shares. Again the matter depends on the proper construction of what the memorandum and articles do say, but the difficulties of construction, where there is no express provision on the point, are well illustrated by two recent decisions. The first is that of Maugham, J. (as he then was) in *Re Walter Symons, Ltd.* [1934] Ch. 308. There the memorandum of association provided that the preference shares "shall confer the right to a fixed cumulative preferential dividend at the rate of 12 per cent. per annum on the capital for the time being paid up thereon . . . and shall rank both as regards dividends and capital in priority to the ordinary shares, but shall not confer the right to any further participation in profits or assets." At the time when the company went into liquidation the preferential dividend had not been paid for two years, and the preference shareholders claimed to be paid out of the assets available for distribution sums representing dividends on their shares for the two years in priority to any repayment of capital to the ordinary shareholders. It was held that they were so entitled to their arrears of dividend. The question in substance depended on the true meaning of the words "and shall rank both as regards dividends and capital in priority to the ordinary shares." The learned judge said that it was reasonably clear on construction that these words referred to something which was to take place in the winding-up. This appeared from the use of the word "rank" and the reference to capital, which of course would not be distributable if the company were a going concern; and further the words following "but shall not confer the right to any further participation in profits or assets," pointed strongly in favour of the view that the clause was dealing with what was to happen in a winding-up. The clause must accordingly be read as if it said: "And in the winding-up the preference shares shall rank both as regards dividends and capital in priority to the ordinary shares." So read, the word "dividends" was to be construed as meaning "arrears of fixed cumulative preferential dividend" to which, therefore, the preference shareholders were entitled in priority to the repayment of capital on the ordinary shares.

The second case is *Re Wood, Skinner & Co., Ltd.* [1944] Ch. 323, where the relevant provision was that the preference shares "shall confer the right to a fixed cumulative preferential dividend of 6 per cent. per annum on the capital paid up thereon, and shall rank both as regards dividends and capital in priority to the ordinary shares." Again the dividends on the preference shares were in arrear when the company went into liquidation, but the assets proved sufficient after discharge of debts and liabilities to repay the capital on the preference shares and to leave something over. The preference shareholders claimed that this surplus should be applied in satisfying their arrears of dividend before any return of capital was made to the ordinary shareholders. Cohen, J. (as he then was), held that the preference shareholders were not so entitled to have their arrears of dividend satisfied, and distinguished the decision in *Re Walter Symons, Ltd., supra*. There was absent in the case before him the provision which appeared in the earlier case, viz., that the preference shareholders were to have no right to any further participation in profits or assets; and the learned judge thought that this provision was almost conclusive of the point in the earlier case. In the case before him the absence of those words meant (on the principle to which I referred above) that if there were any surplus after repaying capital on both preference and ordinary shares, the preference shareholders would have been entitled to participate *pari passu* with the ordinary shareholders in the distribution of the surplus assets. Accordingly, these words being absent, he did not think the word "rank" was confined to winding-up; it was intended to cover winding-up so far as capital was concerned but, as regards dividends, it referred to dividends in the strict sense of the word, i.e., while the company was a going concern. That is to say, as I understand it, the learned judge construed the relevant words (which I have quoted above) as meaning "shall rank as regards dividends before a winding-up and capital in a winding-up in priority to the ordinary shares."

It will be readily observed that the ground of distinction in the two cases is a fine one, and, indeed, it is not altogether clear why the additional words which were present in the *Walter Symons* case should compel a different construction of the preceding identical words. However, I am not primarily concerning myself in this article with detailed questions of construction; the moral I would again point is to preclude such a question arising at all by providing expressly whether or not preference shares are in a winding-up to get arrears of dividend in priority to any return of capital to the ordinary shareholders.

If express provision is made for the payment of such arrears of dividend it is advisable to say plainly that these arrears are to be paid whether or not there are profits among the assets available for distribution; for there have been decisions to the effect that even if there is express provision for payment of arrears of dividend in a winding-up, it is essential that profits should have been earned out of which a preferential dividend could have been declared and paid, before it can be said that the dividend is in arrear (see *Re W. J. Hall & Co.* [1909] 1 Ch. 521, and cf. *Re Springbok Agricultural Estates, Ltd.* [1920] 1 Ch. 563). And if the relevant provision is that the preference shareholders shall be paid all arrears of dividend "due" at the date of winding-up, there are no arrears payable unless dividends have been declared, for if no dividends have been declared none have become "due" (*Re Roberts & Cooper, Ltd.* [1929] 2 Ch. 383); so that again it may be well to make clear that the payment of arrears of dividend is to be paid whether or not the dividends have been declared. It is to cover these points that, in making provision for the payment of arrears of dividend in a winding-up, the draftsman necessarily uses a comparatively lengthy form of words; as, for example, that the preference shareholders are to have the right, before anything is paid to the ordinary shareholders, to "repayment of capital together with all arrears or accruals of their preferential dividend, whether declared or not, and whether or not there shall have been profits available for the payment thereof."

A CONVEYANCER'S DIARY

DRAFTING

In view of my Diary of the 22nd December, 1945, concerning the method of drafting simple conveyances, a correspondent submits the following draft and asks for my observations:—

> "By this deed sealed and delivered the 16th March 1946, I John Doe acknowledge the receipt of £ . . . in consideration of which as beneficial owner I sell to Richard Roe the property described in the First Schedule and shown on the plan attached hereto and acknowledge the right to the production of and delivery of copies of the documents specified in the Second Schedule. In Witness etc. . . ."

He suggests that if one follows out logically the very bald methods of drafting which I have supported, there is no reason for keeping the existing form of conveyance at all. His draft comes as rather a shock, because it is in form a deed poll drawn in the first person, as against the conventional deed *inter partes* in the third person. No doubt it is meant as an extreme example to show where the bald method leads. But, once one gets over the initial shock, is there really much wrong with a conveyance in this form?

Obviously one or two modifications of my correspondent's draft would be desirable. First, it is open to the criticism that it does not contain any recital that the vendor is estate owner in respect of the fee simple in the property. I should be sorry to see a provision of that sort permanently and finally omitted from conveyances. Indeed, I think that its omission would be a positive disadvantage to the purchaser, on whose behalf the draft is presumably being settled. Under the existing practice a recital that the vendor is estate owner will ripen in the course of twenty years into presumptive evidence that such was indeed the case. Law of Property Act, 1925, s. 45 (6), provides that "recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, 20 years old at the date of contract, shall, unless and except so far as they may be proved to be inaccurate be taken to be sufficient evidence of the truth of such facts, matters, and descriptions." This is much the most serious criticism of my correspondent's draft.

Next, there is the designation of the parties. John Doe and Richard Roe are conventional names. If the actual names for which they stand are names reasonably unusual, there seems no particular harm in the omission of any description or address in the case of either of them. As regards the vendor's identity, the fact that the purchaser gets the documents will (if such be the case) be sufficient to indicate that the conveyance has been made by the right John Doe. If, as in the present case, there are some continuing obligations between the parties owing to the acknowledgment, it would be convenient that the vendor's address and description should be included to improve the chances of finding him if need arises. But the absence of the address and description would not be fatal to the validity of the transaction. Conversely, its presence neither guarantees that he can be found, nor that he ever did live at the stated address or was of the description mentioned. As regards the purchaser, Richard Roe, there seems no need for an address or description at all, since he will himself be the person to produce this document on a future occasion. The case is somewhat different if the names of the parties are, for example, John Brown and Henry Smith: there are so many people with those names that it may become desirable to attempt to distinguish either party from a namesake. Even so, the fact that this deed will be with the other deeds and will change hands with them on completion (if such be the case) would be a considerable protection against confusion.

My correspondent refers in the body of the deed to "property described in the First Schedule and shown on the plan attached hereto." I should be inclined to refer simply to "property described in the First Schedule," and to relegate the reference to a plan to that schedule, viz., "the land called Blackacre at Dale in the County of Clay, shown on the plan drawn hereon." This arrangement puts all the materials for identification in the same place.

Again, and this is perhaps a more serious point, my correspondent's draft says: ". . . as beneficial owner I sell to Richard Roe." I should prefer the words ". . . as beneficial owner I convey . . ." The word "sell" is not a term of art; it is the word "convey" that connotes the actual transfer of a right from one person to the other. Despite the provision for a seal made in my correspondent's draft, it would be strongly arguable that the word "sell" is appropriate to a contract for sale rather than to a grant, and that the draft would operate only as a contract under seal to sell. It would thus transfer only the equitable fee simple and not the legal estate. Even if this argument failed, the use of "sell" would have caused avoidable inconvenience.

There remains the question of form. As I said, a deed poll in the first person strikes one as a very extraordinary way of dealing with a legal estate in land. But, though that is true in connection with unregistered land, one has got to bear in mind that such instruments are in fact already in daily use for the transfer of registered land. For instance, in Potter on Registered Land Conveyancing, at p. 355, there is the following form:—

H.M. Land Registry.
Land Registration Act, 1925.

District
Title Number
Property

[Date] In consideration of pounds (£) the receipt of which is hereby acknowledged I A.B. of etc. as beneficial owner hereby transfer to C.D. of etc. the land comprised in the title above referred to. And the said A.B. hereby acknowledges the right of the said C.D. to the production of the documents mentioned in the Schedule hereto and hereby undertakes for the safe custody of the same.

This deed poll exhibits a curious and not very happy mixture of the first and third persons, but the operative words are in the first person. There does not appear to be any reason for thinking that the mere fact that the title is registered makes any difference as to the correctness or

otherwise of the use of a deed poll in the first person. Both for registered and unregistered land a deed *inter partes* is in some cases necessary, as, for instance, where the purchaser enters into restrictive covenant or covenants for indemnity. But in the simplest case of a conveyance, which will not in any event be executed by the purchaser, there seems no point in the conventional form, which has been carried over from the days of indentures.

While I thus accept the main scheme of my correspondent's draft, I should prefer to re-phrase it slightly to meet the criticisms above. I also suggest the division of its single long sentence into a series of numbered short sentences, thus :—

"I John Doe make this deed sealed and delivered the 16th March 1946.

1. The property described in the First Schedule is vested in me in unincumbered legal fee simple.

2. I acknowledge the receipt of £ . . . from Richard Roe.

3. In consideration thereof as beneficial owner I convey to Richard Roe the said property.

4. I acknowledge the right of Richard Roe to production and delivery of copies of the documents specified in the Second Schedule."

I am not saying that the time is yet come when all my clients will be pleased to receive a draft of this kind from me. In fact, if I am asked to settle a draft it is usually not susceptible of such brevity. The process of simplification must begin with drafts settled by solicitors. The ordinary straight-forward conveyance is drawn by the solicitor and is seen only by the lay client. The latter is often impatient with legal jargon, and would, I suggest, be delighted to receive a document such as this. It is even simpler than the common form of transfer of stock ; it could, indeed, easily be put on the back of a postcard, unless there is something very complicated about the parcels to be specified in the First Schedule. It is, of course, only appropriate to the most elementary cases, but I suppose that three-quarters of all conveyances merit that description. If both parties have to execute it, I think that we might as well retain the conventional form for the present. Even so, as I sought to explain in the Diary of 22nd December, 1945, the document can well be simple. Whichever form is used, the paramount object is to achieve the maximum simplicity consistent with effectively covering all the points that need be covered. Obviously a change of method so drastic cannot be achieved all at once. I rather think that my correspondent may have intended to shock me by excessive modernism, and to suggest that the pleas which I have made for simplicity merit some mild degree of ridicule. At first sight his draft certainly caused me some surprise, but with the few modifications mentioned above, it is not only effective but more sensible than the conventional method. It is also more intelligible to the layman, if that is an advantage.

LANDLORD AND TENANT NOTEBOOK

ABSENTEE TENANTS

In last week's "Notebook" I discussed one of those situations which are dealt with at length in the text-books, though they rarely arise in everyday life, namely, the grant by a tenant of a term exceeding his own interest. The occasion was the decision in *Milmo* v. *Carreras* [1946] W.N. 39 (C.A.), in which a tenant in the position indicated unsuccessfully sought to recover possession of his (controlled) flat. Since then my attention has been drawn to a county court decision reported in the *Property Owners' Journal* for February of this year, under the heading "Unusual Possession Case—House sold with Vacant Possession," in which a tenant successfully established his rights against an innocent purchaser to whom vacant possession had been assured.

The sequence of events is of some importance : (1) On 27th July, 1944, the house, then occupied by the plaintiff under a weekly tenancy, suffered damage by enemy action, and the plaintiff was accommodated elsewhere in the district by the local authority. (2) On 28th July, 1944, he saw his landlord and said he did not think he wished to return to the house ; the landlord asked him about the key, and the plaintiff said he would leave it over the door. (3) Some time between July, 1944, and January, 1945, the landlord's son told the plaintiff he wanted to inspect the house, and the plaintiff gave him the key accordingly. (4) At about the same time the local authority informed the plaintiff that repairs were in progress and advised him to keep in touch with the landlord. (5) Thereupon the plaintiff called on the landlord, saying he had done so because of the corporation letter, and said that he was not keen on returning. (6) The landlord agreed to sell the house with vacant possession to the defendant. (7) In May, 1945, the defendant took possession.

It will have been observed that the tenancy was a short tenancy within the meaning of s. 1 of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, and I think further facts may be assumed, namely, that no notices were issued or proceedings taken under that Act, that the premises were wholly unfit and remained unfit till repaired, and no rent was offered or demanded after the "incident."

For the issue, as will have been expected, turned on the question whether what had taken place constituted a surrender by operation of law, which question was decided in the plaintiff's favour.

Taking the first five of the six facts proved in chronological order : (1) the effect of the damage and evacuation would merely be that no rent was payable in respect of the period during which the property was unfit ; (2) a statement by a tenant not in occupation that he does not think he wishes to return, could not be construed as an offer to surrender ; the landlord's inquiry about the key might mean that *he* so construed the statement, but the effect of this inquiry and the statement in reply about leaving it over the door would at most amount to an offer to accept a surrender. The position would be the converse to that which obtained in *Phené* v. *Popplewell* (1862), 12 C.B. (N.S.) 334, when a tenant left keys at the landlord's office and their presence there was held to amount to a continuing offer to yield up the estate, which the landlord might, but need not, accept at any time ; while acceptance was inferred from his handing them to an estate agent with a view to showing the premises to a particular prospective tenant ; (3) in the circumstances of the recent case, s. 1 (8) (*b*) of the Act cited specially provides that by retaining keys the tenant incurs no liability ; while the tenant did hand the key to the landlord's son, this was clearly not in response to the landlord's earlier suggestion but in order to enable the son to carry out his avowed intention to inspect. In every case in which the handing over of keys has contributed to a finding of surrender there has been further conduct pointing that way, whether it be an intimation that the landlord will be delighted to see the last of the tenant, as in *Grimman* v. *Legge* (1828), 8 B. & C. 324, or an attempted letting as just mentioned ; and the facts of the present case were, indeed to some extent, reminiscent of those of *Oastler* v. *Henderson* (1877), 2 Q.B.D. 575 (C.A.), when keys handed to the landlord's agent were actually used by the landlord who put workmen in to do repairs, the tenant being in America, but it was held that neither this nor some tentative efforts to let constituted an acceptance of the offer evidenced by conduct in sending the keys to the agent ; (4) the conduct of the local authority and its views of the relationship could not affect the position ; but (5) the plaintiff's reaction, a statement that he was not keen on returning, even if it might be said to amount to an offer to surrender, would not amount to a continuing offer, and it was not accepted. It may be that by the time he made the contract of sale the vendor thought that all the events that had happened and not

COUNTY COURT CALENDAR FOR APRIL, 1946

Circuit 1—Northumberland

His Hon. Judge Richardson

Alnwick,
Berwick-on-Tweed,
Blyth,
Consett, 12
Gateshead, 9
Hexham,
Morpeth, 8
†*Newcastle-upon-Tyne, 16, 18 (B.), 26 (J.S.)
North Shields, 25
Seaham Harbour, 29
South Shields, 24
Sunderland, 17

Circuit 2—Durham

His Hon. Judge Gamon

Barnard Castle, 4
Bishop Auckland, 16
Darlington, 3, 17
*Durham, 3 (J.S.), 15
Guisborough,
Leyburn,
Middlesbrough, 11 (J.S.), 30
Northallerton, 18
Richmond,
†*Stockton-on-Tees, 9
Thirsk,
West Hartlepool, 10

Circuit 3—Cumberland

His Hon. Judge Allsebrook

Appleby, 15
†*Barrow-in-Furness, 3, 4
Brampton,
*Carlisle, 17
Cockermouth,
Haltwhistle, 13
*Kendal, 16
Keswick, 4 (R.)
Kirkby Lonsdale,
Millom,
Penrith, 18
Ulverston,
†*Whitehaven, 10
Wigton, 12
Windermere, 5
*Workington, 11

Circuit 4—Lancashire

His Hon. Judge Peel, O.B.E., K.C.

Accrington, 11
†*Blackburn, 12, 15, 24 (B.), 30 (J.S.)
†*Blackpool, 3, 4, 10, 17 (J.S.), (B.)
Chorley, 8
Lancaster, 5
†*Preston, 2, 16 (J.S.), 29 (B.)

Circuit 5—Lancashire

His Hon. Judge Harrison

†*Bolton, 3, 17 (J.S.)
Bury, 1 (J.S.), 15
*Oldham, 4, 18, 25 (J.S.)
Rochdale, 5 (J.S.), 26
*Salford, 2 (J.S.), 16, 29, 30 (J.S.)

Circuit 6—Lancashire

His Hon. Judge Crosthwaite

His Hon. Judge Proctor

†*Liverpool, 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 29, 30
St. Helens, 3, 17
Southport, 2, 16
Widnes, 5
*Wigan, 4, 18

Circuit 7—Cheshire

His Hon. Judge Burgis

Altrincham, 3 (J.S.), 17
*Birkenhead, 3 (R.), 17 (R.), 30
Chester, 2
*Crewe, 5
Market Drayton,
Nantwich,
*Northwich, 12
Runcorn, 16
*Warrington, 4, 11 (J.S.)

Circuit 8—Lancashire

His Hon. Judge Rhodes

Leigh, 5, 12 (R.)
†*Manchester, 1, 2, 3, 4, 5 (B.), 10

Circuit 10-Lancashire

His Hon. Judge Raleigh Batt

*Ashton-under-Lyne, 5
*Burnley,
Colne,
Congleton, 26
Hyde, 17
*Macclesfield, 9
Nelson,
Rawtenstall, 10
Stalybridge, 11, 25 (J.S.)
*Stockport, 2, 3 (J.S.), 16
Todmorden, 30

Circuit 12—Yorkshire

His Hon. Judge Rice-Jones

*Bradford, 4, 12, 15 (J.S.)
Dewsbury, 17
*Halifax, 11
*Huddersfield, 9, 10
Keighley, 2
Otley, 3
Skipton, 1
Wakefield, 2 (R.), 16

Circuit 13—Yorkshire

His Hon. Judge Essenhigh

*Barnsley, 11, 12
Glossop, 10
Pontefract, 29, 30
Rotherham, 16, 17
*Sheffield, 4, 5, 9 (J.S.), 18

Circuit 14—Yorkshire

His Hon. Judge Stewart

His Hon. Judge Ormerod

Harrogate, 12
Leeds, 3, 4 (J.S.), 16 (R.B.) 17, 18 (J.S.)
Ripon, 30
Tadcaster,
York, 16

Circuit 16—Yorkshire

His Hon. Judge Griffith

Beverley, 12
Bridlington, 8
Goole, 26
Great Driffield,
†*Kingston upon Hull, 15 (R.), 16 (R.), 17, 18 (J.S.), 29 (R.B.)
Malton,
Scarborough, 9, 10, 16 (R.B.)
Selby,
Thorne, 25
Whitby,

Circuit 17—Lincolnshire

His Hon. Judge Shove

Barton - on - Humber,
†*Boston, 11 (R.), 18, 25 (R.B.)
Brigg, 1
Caistor,
Gainsborough, 10 (R.), 15
Grantham, 3 (R.), 12
†*Great Grimsby, 4 (R.B.), 9, 10 (J.S.), 11, 25 (J.S.), 26
(*R. every Wednesday*)
Holbeach, 25 (R.)
Horncastle, 26 (R.)
*Lincoln, 4 (R.B.) 8
*Louth, 30
Market Rasen, 16 (R.)
Scunthorpe, 2, 8 (R.), 16
Skegness, 29
Sleaford, 30 (R.)
Spalding, 24
Spilsby, 26 (R.)

Circuit 18—Nottinghamshire

His Hon. Judge Capors

Doncaster, 3, 4, 5, 30
East Retford, 30 (R.)
Mansfield, 15, 29
Newark, 2, 9 (R.)
*Nottingham, 4 (R.B.), 10, 11, 12 (J.S.), 17, 25, 26 (B.)
Worksop, 9 (R.), 16

Circuit 19-Derbyshire

His Hon. Judge Willes

Alfreton, 16
Ashbourne,
Bakewell,
Burton-on-Trent, 17 (R.B.)
Buxton, 15
Chesterfield, 5, 26
*Derby, 3, 30 (R.B.)
Ilkeston, 30
Long Eaton, 25
Matlock,
New Mills,
Wirksworth, 4

Circuit 20—Leicestershire

His Hon. Judge Field, K.C.

Ashby-de-la-Zouch, 18
*Bedford, 16 (R.B.)
Hinckley,
Kettering, 30
*Leicester, 8, 9, 10 (J.S.), (B.), 11 (B.), 12 (B.)
Loughborough, 16
Market Harborough,
Melton Mowbray,
Oakham,
Stamford,
Wellingborough,

Circuit 21—Warwickshire

His Hon. Judge Dale

His Hon. Judge Tucker (Add.)

*Birmingham, 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16 (B.), 17, 29, 30

Circuit 22—Herefordshire

His Hon. Judge Roope Reeve, K.C.

Bromsgrove, 12
Bromyard,
Evesham, 10
Great Malvern, 8
Hay, 4
*Hereford, 16, 25
*Kidderminster, 9
Kington, 17
Ledbury,
*Leominster, 15
Ross, 26
*Stourbridge, 4, 5
Tenbury,
*Worcester, 11, 18

Circuit 23 — Northamptonshire

His Hon. Judge Forbes

Atherstone,
Banbury, 12
Bletchley, 30
Chipping Norton,
*Coventry, 8 (R.B.), 9
Daventry, 17
Leighton Buzzard
*Northampton, 15, 16
Nuneaton,
Rugby, 11
Shipston-on-Stour, 29
Stow-on-the-Wold, 10
Stratford-on-Avon,
Warwick, 5 (R.B.)

Circuit 24 — Monmouthshire

His Hon. Judge Thomas

Abergavenny, 5
Abertillery, 23
Bargoed, 24
Barry, 11
†*Cardiff, 8, 9, 10, 12, 15
Chepstow, 4
Monmouth, 16
*Newport, 25, 26
Pontypool and Blaenavon, 17
*Tredegar, 18

Circuit 25—Staffordshire

His Hon. Judge Finnemore

*Dudley, 16, 30
*Walsall, 11, 18, 25
*West Bromwich, 3, 10, 17
*Wolverhampton, 5, 12, 26

Circuit 26—Staffordshire

His Hon. Judge Tucker

*Hanley, 11, 25, 26
Leek, 15
Lichfield, 3
Newcastle - under - Lyme, 16
Redditch, 12
*Stafford, 5
*Stoke-on-Trent, 10
Stone,
Tamworth, 4
Uttoxeter,

Circuit 28-Shropshire

His Hon. Judge Samuel, K.C.

Brecon, 12
Bridgnorth, 10
Builth Wells, 4
Craven Arms, 3
Knighton, 2
Llandrindod Wells, 5
Llantyllin,
Llandloes,
Ludlow, 8
Machynlleth,
Madeley, 11
Newtown,
Oswestry, 9
Shrewsbury, 15, 18
*Wellington, 16
Welshpool,
Whitchurch, 17

Circuit 29—Caernarvonshire

His Hon. Judge Evans, K.C.

Bala,
†*Bangor, 8
Blaenau Festiniog, 16
*Caernarvon, 10
Colwyn Bay,
Conway, 11
Corwen,
Denbigh,
Dolgelly,
Flint,
Holyhead,
Holywell, 18
Llandudno,
Llangefni,
Llanwrst, 12 (R.)
Menai Bridge, 9
Mold, 30 (R.)
*Portmadoc, 15
Pwllheli, 12
Rhyl, 17
*Ruthin, 23
Wrexham, 24, 26

Circuit 30—Glamorganshire

His Hon. Judge Williams, K.C.

*Aberdare, 2
Bridgend, 29 (R.), 30
Caerphilly, 18 (R.)
Merthyr Tydfil, 4
*Mountain Ash, 3
Neath, 17, 18
*Pontypridd, 10, 11
*Porth, 8
Port Talbot, 16
*Ystradyfodwg, 9

Circuit 31—Carmarthenshire

His Hon. Judge Morris, K.C.

Aberayron, 18
†*Aberystwyth, 26
Cardigan, 29
†*Carmarthen and Ammanford, 5, 16
†*Haverfordwest, 17
Lampeter,
Llandovery,
Llanelly, 25, 30
Narberth, 15
Newcastle Emlyn,
Pembroke Docks,
*Swansea, 8, 9, 10, 11

Circuit 32—Norfolk

His Hon. Judge Pugh Beeches, 9
Diss, 2
Downham Market, 18
East Dereham,
Fakenham,
†*Great Yarmouth, 4, 5
Harleston,
Holt,
†*King's Lynn, 11, 12
*Lowestoft, 3
North Walsham,
*Norwich, 15 (B.), 16, 17
Swaffham, 10
Thetford, 26

Circuit 33—Essex

His Hon. Judge Hildesley, K.C.

Braintree,
*Bury St. Edmunds, 16
*Chelmsford, 2
Clacton, 30
Colchester, 3, 4
Felixstowe,
Halesworth, 8
Halstead, 12
Harwich,
Ipswich, 5, 10, 11
†*Maldon,
Saxmundham, 29
Stowmarket, 26
Sudbury,
Woodbridge, 17

Circuit 34-Middlesex

His Hon. Judge Tudor Rees

His Hon. Judge Collingwood (Add.)

Uxbridge, 2, 16

Circuit 35 — Cambridgeshire

His Hon. Judge Campbell

Biggleswade, 2, 30
Bishops Stortford, 3
*Cambridge, 5 (R.B.), 17 (J.S.), 18
Ely, 15
Hitchin, 12
*Huntingdon, 26 (R.)
Luton, 4 (J.S.) (B.), 5, 18 (R.B.)
March, 1
Newmarket, 26
*Oundle, 10
Peterborough, 5 (R.), 8, 9
Royston,
Saffron Walden, 29
Thrapston,
Wisbech, 16

Circuit 36—Berkshire

His Hon. Judge Hurst

*Aylesbury, 5, 26 (R.B.)
Buckingham, 16
Cheltenham, 16, 17
Henley-on-Thames,
High Wycombe, 4
Northleach,
Oxford, 8, 15 (R.B.), 29
Reading, 4 (R.B.), 10, 11, 12
Tewkesbury,
Thame, 25
Wallingford,
Wantage,
Witney,

Circuit 37-Middlesex

His Hon. Judge Sir Gerald Hargreaves

Cheshunt, 2
*St. Albans, 16
West London, 1, 2, 3, 8, 9, 10, 15, 17, 29, 30

Circuit 38-Middlesex

His Hon. Judge Andrew

Barnet, 2, 16
*Edmonton, 4, 5, 9, 11, 12, 30
Hertford, 10
Watford, 3, 17

Circuit 39-Middlesex

His Hon. Judge Engelbach

His Hon. Judge Tudor Rees (Add.)

Shoreditch, 1, 4, 5, 8, 11, 12, 15, 16, 29, 30
Windsor, 3, 10, 17, 24

Circuit 40-Middlesex

His Hon. Judge Alchin

His Hon. Judge Drucquer (Add.)

His Hon. Judge Tudor Rees (Add.)

Bow, 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 30

Circuit 41-Middlesex

His Hon. Judge Earengey, K.C.

His Hon. Judge Trevor Hunter, K.C. (Add.)

Clerkenwell, 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 30

Circuit 42-Middlesex

His Hon. Judge Neal

His Hon. Judge David Davies, K.C.

Bloomsbury, 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 30

Circuit 44-Middlesex

His Hon. Judge Drucquer

His Hon. Judge Davies, K.C. (Add.)

Westminster, 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 29, 30

Circuit 45—Surrey

His Hon. Judge Hancock, M.C.

His Hon. Judge Hurst (Add.)

*Kingston, 2, 5, 9, 12, 30
*Wandsworth, 1, 3, 4, 8, 10, 11, 29

Circuit 46-Middlesex

His Hon. Judge Daynes, K.C.

Brentford, 1, 4, 8, 11, 29
*Willesden, 2, 3, 5, 9, 10, 12, 30

Circuit 47—Kent

His Hon. Judge Bensley Wells

His Hon. Judge Hurst (Add.)

Woolwich, 10, 17

Circuit 48—Surrey

His Hon. Judge Bensley Wells

His Hon. Judge Collingwood (Add.)

Dorking,
Epsom, 3, 9, 10, 16
*Guildford, 4, 11
Horsham,
Lambeth, 1, 2, 3, 5, 8, 9, 11, 12, 15, 16
Redhill, 17

Circuit 49—Kent

His Hon. Judge Clements

Ashford, 8
*Canterbury, 9
Cranbrook,
Deal, 12
*Dover,
Folkestone, 17
Hythe,
*Maidstone, 5
Margate, 4
*Ramsgate,
†*Rochester, 10, 11
Sheerness,
Sittingbourne, 16
Tenterden, 15

Circuit 50—Sussex

His Hon. Judge Archer, K.C.

Arundel, 5
Brighton, 4, 11, 18
†*Chichester, 12
*Eastbourne, 17
*Hastings, 9
Haywards Heath,
*Lewes, 29
Petworth, 15
Worthing, 2, 30

Circuit 51 — Hampshire

His Hon. Judge Topham, K.C.

Aldershot, 12
Basingstoke, 10
Bishops Waltham, 4
Farnham,
*Newport, 24
Petersfield,
†*Portsmouth, 1 (B.), 4, 11, 18
Romsey, 5
Ryde,
†*Southampton, 2, 9, 10 (B.), 16, 17
*Winchester,

Circuit 52—Wiltshire

His Hon. Judge Jenkins, K.C.

*Bath, 4 (B.), 11 (B.)
Calne,
Chippenham, 9 (R.)
Cirencester, 25
Devizes, 8 (R.)
Dursley,
*Frome, 10 (R.)
Hungerford, 15
Malmesbury, 18
Marlborough,
Melksham, 12
*Newbury, 1 (R.)
Stroud, 30
*Swindon, 3, 10 (B.)
Trowbridge, 5
Warminster,
Wincanton, 12 (R.)

Circuit 54-Somersetshire

His Hon. Judge Wethered

†*Bridgwater, 5
†*Bristol, 10, 11, 12 (B.), 15 (J.S.), 16, 17, 29, 30
Gloucester, 8, 9
Minehead, 16 (R.)
Newent,
Newnham,
Thornbury,
*Wells, 2
Weston-super-Mare, 3

Circuit 55 — Dorsetshire

His Hon. Judge Cave, K.C.

Andover, 10
Blandford, 18
*Bournemouth, 4 (R.), 16 (J.S.), 17
Bridport, 30
Crewkerne, 9 (R.)
*Dorchester, 5
Lymington, 12
*Poole, 3, 24 (R.)
Ringwood, 25
*Salisbury, 4
Shaftesbury, 1
*Weymouth, 2
Swanage, 26
Wimborne, 8
*Yeovil, 11

Circuit 56—Kent

His Hon. Judge Sir Gerald Hurst, K.C.

Bromley, 9, 10, 17
*Croydon, 2, 3, 15, 16, 29, 30
Dartford, 4, 11
East Grinstead,
Gravesend, 8
Sevenoaks,
Tonbridge,
Tunbridge Wells, 18

Circuit 57-Devonshire

His Hon. Judge Thesiger

Axminster, 15 (R.)
†*Barnstaple, 30
Bideford,
Chard, 25 (R.)
†*Exeter, 11, 12
Honiton, 15
Langport, 29
Newton Abbott, 25
Okehampton, 26
South Molton,
Taunton, 8
Tiverton, 17
*Torquay, 9, 10
Torrington,
Totnes,
Wellington, 15 (R.)

Circuit 58—Essex

His Hon. Judge Trevor Hunter, K.C.

His Hon. Judge Daynes (Add.)

Brentwood, 5 (R.)
Gray's Thurrock, 9 (R.)
Ilford, 1 (R.), 2, 3, 8 (R.), 15 (R.), 16, 17, 29 (R.), 30
Southend, 10, 11 (R.), 12, 17 (R.B.)

Circuit 59—Cornwall

His Hon. Judge Armstrong

Bodmin, 11 (R.)
Camelford, 10 (R.)
Falmouth, 15 (R.)
Helston, 15
Holsworthy,
Kingsbridge, 24 (R.)
Launceston, 12
Liskeard, 10
Newquay,
†*Penzance, 8
Plymouth, 3 (R.), 16, 17, 18
Redruth, 4
St. Austell, 9
Tavistock, 11
†*Truro, 5

The Mayor's & City of London Court

His Hon. Judge Dobson

His Hon. Judge Beazley

His Hon. Judge Thomas

His Hon. Judge McClure

Guildhall, 1, 2, 3 (A.), 4, 5 (J.S.), 8, 9, 10 (A.), 11, 12 (J.S.), 15, 16, 29, 30

* = Bankruptcy Court
† = Admiralty Court
(R.) = Registrar
(J.S.) = Judgment Summonses
(B.) = Bankruptcy
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = Admiralty

happened, justified his offering vacant possession; to which the short answer is: "Forty black rabbits do not make one black ram."

The learned judge expressed sympathy with the defendant, and regretted that no solicitor had been engaged to keep the parties advised as to their legal position; and there were, indeed, a number of things that could have been done, especially by the vendor, to ascertain where he stood. He could not, it is true, have asked for the tenancy to be determined under s. 1 (6) of the Act, even three months after the repairs were done, for the condition "(*c*) the landlord has made all reasonable efforts to communicate with the tenant and has failed to do so," was not fulfilled; but a simple claim for rent would have clarified the position. Whether a case for determination under the Distress for Rent Act, 1737, as amended by the Deserted Tenements Act, 1817, could have been made out, is open to question; at all events, the landlord would have to wait until half a year's rent was in arrear, thus not counting the period of total unfitness, and then prove that the tenant had "deserted" the premises. Further, the "Ridley" Inter-departmental Committee on Rent Control, which recommends the repeal of this legislation, appears to doubt whether it applies to weekly tenancies; presumably because of the mention of lands, tenements or hereditaments held at a rack-rent or a rent "full three-fourths of the yearly value of the demised premises." I do not think that there is any authority to support the committee's doubt, and the cumbersome procedure has in fact been applied to cases of premises let by the month.

TO-DAY AND YESTERDAY

March 25.—The statute 4 Geo. II, c. 26, recited that "many and great mischiefs do frequently happen to the subjects of this kingdom from the proceedings in courts of justice being in an unknown language, those who are summoned and impleaded having no knowledge or understanding of what is alleged for or against them by their lawyers and attornies, who use a character not legible to any but persons practising the law"; it enacted that after 25th March, 1733, all proceedings in courts of justice in Great Britain should be in English only and not in Latin or French or any other tongue, and should be written in a common legible hand and character and not in court hand.

March 26.—Charles Rann Kennedy distinguished himself as a classical scholar at Cambridge, and was called to the Bar by Lincoln's Inn in 1835. In 1856 he became professional adviser to Mrs. Swinfen, the plaintiff in a celebrated will case, and for several years he devoted himself with great energy to her interest, carrying the litigation to a successful issue. Then in 1861 she married a gentleman named Broun. There followed a rupture with Kennedy, who brought an action for £20,000 for services rendered, himself conducting his own case. The hearing began at the Warwick Assizes on 26th March, 1862, and provided a good deal of sensational matter. The lady asserted that the plaintiff had undertaken the case solely for friendship and with no prospect of reward but what might be the result of her success. He, on the other hand, declared that having been reduced to very low circumstances as a result of his great devotion, he sought some security for the sum in which she was indebted to him, and, during a visit to the Zoological Gardens, induced her to promise to execute a deed conveying to him the reversionary interest in the Swinfen Hall estates, expectant on her decease. This promise she fulfilled, but she subsequently repudiated the deed. Kennedy also claimed that the lady had lived with him for some time as his mistress, though he was a married man with a family, and letters and poems which he had written to her were produced. He obtained a verdict at the Assizes, but lost it at Westminster on the ground that counsel cannot sue for his fees (*Kennedy* v. *Broun* (1862), 1 F. & F. 801). His nephew became Kennedy, L.J.

March 27.—Grace Tripp, a nineteen year old maid in Lord Torrington's London house, was persuaded to let in a man to rob it. The housekeeper disturbed them and he cut her throat, Grace holding a candle. When they were caught, the man turned King's evidence, and Grace was convicted and hanged at Tyburn on 27th March, 1710.

March 28.—Edward Bonnet, a country grocer ruined by a fire, turned highwayman and achieved over 300 robberies, mostly in his native Cambridgeshire. He was eventually betrayed by a comrade and hanged at Cambridge Castle on 28th March, 1713.

March 29.—It was at a meeting of solicitors at Serle's Coffee House on 29th March, 1825, that it was decided to form the present Law Society. The scheme then drafted was subsequently adopted at a meeting at Furnival's Inn.

March 30.—In 1867, the political opponents of Andrew Johnson, seventeenth President of the United States, passed the Tenure of Office Act, prohibiting him from dismissing from office any officer appointed by the consent of the Senate, unless it should agree. To test it, he dismissed a disloyal Secretary of War, and the House of Representatives brought articles of impeachment against him. The proceedings opened before the Senate on 30th March, 1868. He escaped conviction by one vote (35 to 19, i.e., one vote short of the two-thirds majority necessary for conviction).

March 31.—Charles Parker Butt became a judge of the Probate, Divorce and Admiralty Division on 31st March, 1883. He succeeded Sir James Hannen as President in 1891.

HEAVIER SENTENCES

Few, save those who have to pay the price, will regret the rise in the cost of living by crime since the advent of the new Lord Chief Justice. Although no one wants to return to the spirit of Tyburn and transportation, the seriousness of the crime wave with which he has set himself to deal may perhaps bring home to us that there was more to be said for the point of view of our ancestors than it has lately been fashionable to admit. A hot controversy springs up every now and then whether the unrelenting severity of Day, J., did or did not stamp out the menace of the Liverpool gangs, but one gathers very clearly that citizens did walk the streets more confidently after his visitations at the Assizes. Old offenders certainly recognise the difference between the scales of sentences which various judges favour. Sir Ralph Littler, who used to preside at the Middlesex Sessions, at the time when the neighbouring territory within the jurisdiction of the Newington Sessions lay under the mild rule of Sir Robert Wallace, was rather proud of his reputation for severity with habitual law-breakers. He used to tell a story of a suspected person caught in a street bordering the two jurisdictions, who said to the policeman that he supposed it meant another three months. "No," replied the constable, "I apprehended you on the Middlesex side of the street." The man saw the point. "Oh, Gawd!" he exclaimed. Of late years there has been a decided tendency to strain the quality of mercy to the utmost. Not very long ago two women who had burned their unwanted babies in the fireplace were bound over. The judge told them severely that they had behaved abominably and urged them: "Don't do that sort of thing again." The *Spectator* was moved to publish a metrical version of his remarks:

"You ought not to have roasted your baby,
It's my duty to make that quite plain,
It was bad and unwise
But there, dry your eyes
And don't roast a baby again."

We have certainly travelled a long way since Mr. Baron Bramwell, sentencing a man convicted of a series of terrible assaults on young children, said: "Your counsel tells me that four years' penal servitude will kill you. I don't care if it does kill you."

QUICK WORK

In the work of the King's Bench Division likewise the new Lord Chief Justice has displayed a turn for speed which is something of an innovation, and soon after his appointment it was computed that he had dispatched eleven days' work in four. For sheer efficiency and dispatch it may be that one must go back among the Chief Justices as far as Lord Russell of Killowen to match him. At this rate it may well be that he may merit some such record as Sir Thomas More's when it was found that all the Chancery arrears had been cleared away:

"When More some years had Chancellor been
No more suits did remain;
The same shall never more be seen
Till More be there again."

In point of delay and dispatch there have sometimes been striking contrasts between contemporary judges, the doubts and procrastinations of Lord Eldon and the lightning swiftness of Vice-Chancellor Leach, the tedium of Vice-Chancellor Plumer and the efficiency of Sir William Grant, M.R. Nevertheless Grant's list was overcrowded and Plumer's almost empty because of the general reluctance to set down causes elsewhere than at the Rolls.

COUNTY COURT LETTER

Nuisance or Annoyance

IN *Tong* v. *Budge*, at Hereford County Court, the claim was for possession of a cottage. The plaintiff's case was that she was the tenant of the cottage, which was owned by her father. Early in 1945 the plaintiff had sub-let the sitting room, two bedrooms and certain furniture to the defendant for 12s. a week, of which 4s. was for use of furniture. Owing to the wilful damage done by the defendant and his family and their bad behaviour, the plaintiff and her family had to move elsewhere. Corroborative evidence was given by four witnesses. The defendant's case was that three rooms in the cottage were let to him unfurnished. He denied the allegations of bad behaviour and damage. His Honour Judge Langman made an order for possession in eight weeks, with costs.

IN *Whitehouse* v. *Cooper*, at Kidderminster County Court, the claim was for possession of No. 1, Severnside Terrace, Bewdley. The plaintiff's case was that her father had formerly owned Nos. 1 and 2, Severnside Terrace, and had let No. 2 to the plaintiff and No. 1 to her married sister. In June, 1938, the married sister had let No. 1 furnished to the defendant. In March, 1945, the plaintiff had bought No. 1 and the furniture from her father, subject to the defendant's tenancy. The plaintiff's case was that (1) the premises were let furnished and were outside the Rent Acts; (2) from 1939 onwards, the violent quarrels of the defendant and his wife and their drinking habits necessitated intervention by the police on many occasions. The defendant's case was that the alleged furniture was merely "old junk," and he had never paid for the use of it. His wife had now gone to live elsewhere with a married daughter and the quarrels had therefore ceased. His Honour Judge Langman made an order for possession in six weeks, provided quiet was maintained in the meantime. By consent an order was made for payment-out of £20 arrears of rent paid into court.

Invalid Notice to Quit

IN *Woodhams* v. *Ballard*, at Shipston-on-Stour County Court, the claim was for possession of Cherry Orchard House, Blockley. The case for the plaintiff was that the premises were let to the defendant at 10s. per week on a weekly tenancy. Possession was required for the plaintiff's daughter, whose husband was about to be demobilised from the Royal Navy. At present she was living with her three children in a cottage which contained a sitting room, two bedrooms and a kitchen. She was willing to change houses with the defendant. The case for the defendant was that he had occupied the house for nine years on a monthly tenancy, as shown by his rent book. The accommodation comprised two rooms, a kitchen and three bedrooms. There was also a large garden. His Honour Judge Forbes gave judgment for the defendant, with costs.

Decisions under the Workmen's Compensation Acts

Injury to Back

IN *Campbell* v. *The B.S.C. Ltd.*, at Kidderminster County Court, the applicant resided in Londonderry, and his evidence had been taken on commission. The deposition occupied fifty pages, and was to the effect that the applicant came to England in September, 1943, more than two years after having an accident causing injury to his back. He had recovered from this injury, but in October the applicant slipped on some spilled sugar, and was so injured as to be unable to continue work. Since his return to Ireland, in November, the applicant had been confined to bed. The case for the respondents was that the applicant never complained to their welfare officer, and their medical evidence was that the applicant had only sustained a strain of the muscles at the side of the spine. Another doctor, having examined the applicant after he had complained of pains in the back, considered that he was suffering from an enlarged liver and internal hæmorrhage. His Honour Judge Langman held that the applicant was totally incapacitated by the accident from the 18th to the 29th October. An award was made at 30s. a week for the above period, plus dependants' allowances, with costs.

Injury to Eye

IN *Bellamy* v. *Turner*, at Grantham County Court, the applicant had been carting in September, 1944, when a bit of wood or dust blew into one eye, the sight of which was lost. The pre-accident wages were £3 3s., and, although the applicant was now earning £3 10s., he could earn more with full sight. He could never resume work as a woodman, as climbing trees made him dizzy, and he could not judge distance in using an axe. His Honour Judge Shove ordered an agreement to be recorded for the payment of £125 in settlement.

REVIEWS

Underhill's Law of Torts. Fifteenth Edition. By RALPH SUTTON, K.C. 1946. London: Butterworth & Co. (Publishers), Ltd. 20s. net.

We should like to say at once, with all respect to the other students' books on torts, that "Underhill" has always been our favourite; we can never be grateful enough to the late Sir Arthur Underhill and to the learned editor of the eleventh edition for our introduction to the subject. Twenty years have passed since that edition came out, a period long enough, in another connection, to let the property legislation grow from birth to maturity, but as yesterday to the common law. We therefore have great difficulty in appreciating that the expansion of "Underhill" from 295 pages to 416 can be justified, especially when the expansion mainly consists in illustrations which are in smaller type than the principles. (The introductory matter has also been increased from 70 pages to 100.) We quite understand that a great many cases on torts have been decided in those years, and that there have been some major issues of principle (conspiracy and the case of the snail in the ginger-beer bottle are two examples). But we doubt whether the student is helped to understand the principle by a multiplication of examples; for many of the recent decisions a reference in a footnote is surely enough. The great merit of "Underhill" was that it distinguished the wood from the trees; that is still so, but the trees are thickening-up dangerously. This book used to be almost perfect for students; but it is not suited to grow up into a practitioner's book, and has not done so. May we hope that at the next revision it will be very severely pruned? If the learned editor aimed at a 50 per cent. reduction and achieved one of 33⅓ per cent. he would have done a service to students. At present we should hesitate to put it into the hands of beginners, for whom we know from personal experience it was formerly most suitable.

Refresher Law, 1939-45. By the EDITORS of "Law Notes." 1945. London: "Law Notes" Publishing Offices. 21s. net.

This book provides for the lawyer who, owing to the war, has been out of touch with the law. It is a handy guide to the more important of the Statutes which have been passed, and of the cases which have been decided, during the war years. The Editors of "Law Notes" have produced a useful book, which should be of great assistance to the ex-service solicitor or articled clerk in dealing with the difficult task of returning to the law.

BOOKS RECEIVED

Constitutional Law. By E. C. S. WADE, M.A., LL.D., of the Inner Temple, Barrister-at-law, and G. GODFREY PHILLIPS, C.B.E., M.A., LL.M. Third Edition. 1946. pp. xxv and (with Index) 474. London: Longmans, Green & Co., Ltd. 25s. net.

Property Rights of Soviet Citizens. By MIKHAIL LIPETSKER. 1946. pp. 45. London: *Soviet News*, 1s. net.

The Law Relating to Town and Country Planning. By W. IVOR JENNINGS, M.A., LL.D., of Gray's Inn, Barrister-at-law. Second Edition by J. R. HOWARD ROBERTS, C.B.E., Solicitor and Parliamentary Officer to the London County Council. 1946. pp. xvi and (with Index) 660. London: Chas. Knight & Co., Ltd. 45s. net.

The Wording of Police Charges. 1946. pp (with Index) 88. London: The Police Review Publishing Co. Ltd. 4s. net.

Second Cumulative Supplement to Eleventh Edition of Bell's Sale of Food and Drugs. By R. A. ROBINSON, O.B.E., of the Middle Temple, Barrister-at-law. 1946. pp. 101. London: Butterworth & Co. (Publishers) Ltd. 7s. 6d. net. Main work, including new Supplement, 27s. 6d. net.

Burke's Loose-leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-law. 1944–45 Volume. Part 15. London: Hamish Hamilton (Law Books) Ltd.

A Textbook of the English Conflict of Laws (Private International Law). By CLIVE M. SCHMITTHOFF, LL.M. (Lond.), LL.D. (Berl.), of Gray's Inn, Barrister-at-law. With a Foreword by the Rt. Hon. Lord Macmillan, G.C.V.O. 1945. pp. xlvi and (with Index) 455. London: Sir Isaac Pitman & Sons, Ltd. 35s. net.

The Income Tax Act, 1945. By N. E. MUSTOE, M.A., LL.B., of Gray's Inn, Barrister-at-law. With examples by S. W. ROWLAND, LL.B. (Lond.), F.C.A. 1946. pp. x and (with Index) 118. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

NOTES OF CASES

COURT OF APPEAL

Baindail *v.* **Baindail**

Lord Greene, M.R., Morton and Bucknill, L.JJ.
30th January, 1946

Husband and wife—Nullity—Hindu marriage contracted in India—Subsequent marriage ceremony between Hindu husband and Englishwoman in England—Validity.

Appeal from a decision of Barnard, J. (61 T.L.R. 549).

The respondent, an Englishwoman, went through a form of marriage at a London register office with a Hindu already married in India to a Hindu woman. Barnard, J., following his own decision in *Srini Vasan* v. *Srini Vasan* [1946] P. 67; 89 SOL. J. 447, granted the respondent a decree of nullity, and the Hindu now appealed.

LORD GREENE, M.R., having discussed *Hyde* v. *Hyde* (1866), L.R. P. & D. 130, said that the question was whether on 5th May, 1939, when the appellant took the respondent to the registry office, he was a married man so as to be precluded from entering into a legitimate union in this country. By the law of his domicile at the time of his Hindu marriage he had acquired the status of a married man according to Hindu law, and he never lost that status. He (his lordship) agreed with Mr. Justice Barnard's decision that the appellant was precluded from entering into a valid marriage in this country. For many purposes the status of a married man according to Hindu law would have to be recognised in this country; for instance, in matters of succession, if a Hindu domiciled in India died in this country intestate. It would, however, be wrong to say that for all purposes the law of the domicile was conclusive. There were some things which the courts would not allow a man to do whatever status the law of his domicile gave him. Slavery provided an obvious example. The question had to be decided with due regard to common sense and what might be called some attention to reasonable policy. The court were not fettered by any decision on the point, but they must have regard to the prospect of an English court's refusing to regard the status conferred by Hindu marriage for a purpose like the present, while the Privy Council arrived at a precisely opposite conclusion on an Indian appeal. If this English ceremony were held valid, disastrous consequences might flow from the fact that the respondent would then be entitled to the consortium of her husband. For, if he decided to return to India, it would be her duty to follow him there, and she might find herself, under Hindu law, obliged to share her husband with his Indian wife. The courts were bound to regard an Indian marriage as an effective bar to a ceremony of marriage over here, and the appeal would be dismissed. Nothing said by him (the Master of the Rolls) must be taken as having the slightest bearing on the law of bigamy; and he expressed no opinion on the question whether a person in the appellant's position was by virtue of his Indian marriage "married" for the purposes of the statutory offence of bigamy.

MORTON and BUCKNILL, L.JJ., agreed.

COUNSEL: *Pritt*, K.C., and *Landau*; *Slade*, K.C., and *Colin Duncan*.

SOLICITORS: *Hy. S. L. Polak & Co.*; *Haslewood, Hare & Co.*, for *W. H. Hadfield*, Farnham.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

APPEAL FROM COUNTY COURT

Dagger *v.* **Shepherd**

Scott and Tucker, L.JJ., and Evershed, J. 6th December, 1945

Landlord and tenant—Notice to quit by landlord—To quit "on or before" a given date—Notice held valid.

Plaintiff's appeal from an order of the learned county court judge at Poole refusing to make an order for possession of residential premises controlled by the Rent Restrictions Acts. The ground of the claim was that the plaintiff required the premises for his own use and occupation under para. (*h*) of Sched. I of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. The plaintiff relied on a notice to quit dated 20th December, 1944 in the following form: "Dear Sir, On behalf of our client, Mrs. W. A. M. Dagger, we hereby give you notice to quit Kenwood on or before March 25th next. As we have already informed you, Mrs. Dagger herself requires possession of the house in order to occupy it herself with members of her family. Please acknowledge the safe receipt of this letter." The learned county court judge decided that the notice to quit was invalid.

EVERSHED, J., reading the judgment of the court, referred to *Gardner* v. *Ingram* (1889), 61 L.T. 729, at p. 730, *per* Lord Coleridge, C.J.; *P. Phipps & Co., etc., Ltd.* v. *Rogers* [1925] 1 K.B. 14, at p. 27, *per* Atkin, L.J.; and *Hankey* v. *Clavering* [1942] 2 K.B. 326, at pp. 329, 330, *per* Lord Greene, M.R. The question was, what, on its fair and reasonable construction, did the document of 20th December mean. In the judgment of the court, without reference to any authority, its true effect was, first, to give the tenant notice that the landlord did thereby give an irrevocable notice to determine on 25th March, 1945, and secondly, to make to the tenant an offer to accept from him a determination of that relationship on any earlier date (of the tenant's choice) on which the tenant should give up in fact possession of the premises. If their view was well-founded, it followed that a notice to quit "on or before" a fixed date was, *prima facie*, valid and effective. The alternative construction was to read the document as equivalent to a notice by the landlord that he intended to terminate the tenancy at some unspecified date not later (and perhaps earlier) than the date stated in the notice. To construe the document as importing an intention to break the contract must be wrong if there was another equally natural meaning which imported no breach. The maxim *ut res magis valeat quam pereat* applied. A similar conclusion followed from the uncertainty which that construction must inevitably, but unnecessarily, create. His lordship referred with approval to *In re Tewkesbury Gas Co.* [1911] 2 Ch. 279, *per* Parker, J., at p. 284, and distinguished *Gardner* v. *Ingram*, *supra*, and *De Vries* v. *Sparks*, 43 T.L.R. 448, on the ground that they involved notices served by the tenants. The court disapproved of the dictum of Lush, J., at p. 122 of [1924] 1 K.B. (*Queen's Club Gardens Estates, Ltd.* v. *Bignell*) and added that no one had taken the point in *Ahearn* v. *Bellman* (1879), 4 Ex. D., that a notice to quit was in the same form. The appeal was allowed and the matter remitted for re-trial by another county court judge.

COUNSEL: *Rees-Davies*; *F. W. Beney*, K.C., and *E. S. Fay*.

SOLICITORS: *Hughes, Hooker & Co.*; *Barnes & Butler*, for *J. W. Miller & Son*, Poole.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

CHANCERY DIVISION

In re **Greycaine, Ltd.**

Lord Uthwatt (sitting as an additional Judge of the Chancery Division). 30th January, 1946

Company—Receiver appointed by debenture holders—Power to charge remuneration on percentage basis—Liquidation—Application to fix receivers' remuneration—No jurisdiction to deal with past remuneration—Companies Act, 1929 (19 & 20 *Geo.* 5, *c.* 23), *s.* 309.

Motion.

The Companies Act, 1929, provides by s. 309: "The court may, on an application made to the court by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company . . ." G, Ltd., by two deeds dated the 8th July, 1929, and 16th November, 1934, charged its undertaking to a trustee to secure two issues of debentures. The deeds authorised the trustee to appoint a receiver, and provided: "The remuneration of such receiver shall be payable out of the mortgaged premises and shall be at such rate not exceeding that provided in the Law of Property Act, 1925, s. 109, as the trustee may from time to time determine." In November, 1936, the trustee appointed B receiver and the deed of appointment expressly authorised him to retain for his remuneration commission at the rate of 5 per cent. of the gross amount of all moneys received by him, and all costs, charges and expenses reasonably incurred by him. In April, 1937, W was appointed an additional receiver. In March, 1938, an order was made for the compulsory winding up of the company. The receivers carried on the business of the company from 1936 until 1940, when the company's works were destroyed by enemy action. Very large sums had passed through their hands, amounting in all to about £1,000,000, of which £737,921 represented trading receipts. The receivers' remuneration, calculated in accordance with the terms of the deeds of charge, amounted to £48,850, and on the payment of the war damage claim they would be entitled to a further £6,560. These sums were an addition to expenses. The liquidator applied under s. 309 asking the court to fix the remuneration of the receivers. The registrar made an order allowing the sum of £15,000. By this motion B and the personal representatives of W, who had died, asked to have the registrar's order discharged.

LORD UTHWATT said that two questions on the construction of s. 309 were raised. The first was whether the court had any jurisdiction at all where a receiver had been appointed at an agreed remuneration, the second was whether an order could be made which covered the past, or whether only the future could be dealt with. As regards the first question, the section applied

where a receiver had been appointed and in that case his remuneration would normally have been agreed. To hold that the section only applied where there was no effective agreement would be to disregard entirely the position which required to be dealt with and to reduce the ambit of the section to a microscopic quantity. The function of the section was to give the court in its winding up jurisdiction power to fix the amount in fact payable. There was more substance in the second point. It was argued that, as the discretion given to the court was a judicial discretion, there was no reason why the section should not be widely construed. In his opinion the jurisdiction could only be exercised as respects the future. He would discharge the order which had been made, and remit the matter to the registrar with a direction that any order made by him was not to relate to remuneration which, pursuant to the terms of the trust deed and the instruments appointing the receivers, had prior to the date of the liquidator's application accrued payable to the receivers.

COUNSEL: *Brunyate; Cecil Turner; Aronson.*

SOLICITORS: *Roney & Co.; Cosmo Cran & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Tottenham; Public Trustee *v.* Tottenham

Wynn-Parry, J. 15th February, 1946

Will—Construction—Bequest "in trust for J until she shall attain twenty-five"—Gift over in the event of J not attaining a vested interest—Whether a vested interest in capital in J.

Adjourned summons.

The testator, by cl. 2 of his will dated the 6th July, 1936, gave his residuary estate to his trustees upon trust to invest the net residue "and to hold such residuary estate in trust for J . . . until she shall attain the age of twenty-five years." By cl. 3 he provided: "In the event of the said J not attaining a vested interest under the trust hereinbefore contained I direct that my residuary estate shall be held in trust for B and M, the daughters of my nephew the said H, when they shall attain the age of twenty-one as tenants in common." By cl. 4 he authorised his trustee, until J attained eighteen, to apply the income for her maintenance and thereafter to apply such part of the residuary estate as he might think fit for her advancement in any business or profession. The testator died in 1936 and J attained twenty-five in 1944. By this summons the trustee asked whether J had become absolutely entitled to the whole of the testator's residuary estate.

WYNN-PARRY, J., said that the matter was one of construction. It appeared clearly from the judgment of Hall, V.-C. in *In re Hedley's Trust*, 25 W.R. 529, that the court was not entitled to depart from the strict letter of the will, unless there was some context to enable the court to do so. Was there any such context here? *Prima facie* the language of cl. 2 led to the conclusion that J's interest in the residuary estate was limited to an interest in the estate until she attained twenty-five. Clause 3 was decisive. The scheme of the will was simple. By cl. 2 the testator gave J an absolute interest contingently on her attaining twenty-five. By cl. 3 he provided for what was to happen if she did not attain a vested interest in capital. He would declare that J was absolutely entitled to the whole of the testator's estate.

COUNSEL: *H. A. Rose; H. E. Salt; W. S. Wigglesworth.*

SOLICITORS: *Royds, Rawstorne & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

VACATION COURT

Ex parte Speculand

Lynskey, J. 13th September, 1945

Bail—Commitment in execution—Jurisdiction of King's Bench Division—Bail granted by justices—Application to judge to reduce amount.

The applicant was charged under s. 23 of the Finance (No. 2) Act, 1940, with failing to register as a trader. He pleaded guilty, and the justices imposed a fine of £4,040 and 20 guineas costs, and, in the alternative, twelve months' imprisonment. He wished to appeal to quarter sessions against the sentence, and asked for time in which to pay the fine. His application was refused, whereupon application was made for bail. The justices granted it, fixing it in the applicant's own recognizance at £1,000 with two sureties of £1,000 each. He now applied to the court to grant bail in lesser sums.

LYNSKEY, J., said that it was argued for the Board of Customs and Excise that there was no inherent or statutory power in that court to grant bail in those circumstances, reliance being placed on *Ex parte Blyth* [1944] 1 K.B. 532, and *In re L.* (1945), 61 T.L.R. 180. Counsel for the applicant argued that the present case was distinguishable because here the justices had in fact granted bail, the only question being the amount of it. He (his lordship) agreed with both those decisions. He regretted that, because it seemed to him that the court should have jurisdiction to deal with applications of this sort. Hallett, J.'s, reasoning, however, convinced him. The law was correctly stated by Lord Russell of Killowen, C.J., in *Reg.* v. *Spilsbury*, where he said ([1898] 2 Q.B. 615, at p. 620) that the only exception to the discretionary authority of the Court of King's Bench in regard to bail was where the commitment was for a contempt or in execution. The commitment of the present applicant was "in execution." If the court had no jurisdiction, as in *Ex parte Blyth, supra*, where the court below could not grant bail at all, *a fortiori* it had not jurisdiction where power was specially given by statute to the court below to exercise the power of granting bail. The justices had exercised that power, but the complaint was that they had exercised it wrongly by fixing a bail which was unreasonable. The court had no power on an application such as this to sit as an appellate court from the exercise by justices of their statutory discretion as to granting and fixing the amount of bail. The application must be refused.

COUNSEL: *Wetton; Christmas Humphreys.*

SOLICITORS: *Rich & Co.; Solicitor of Customs and Excise.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

Thomas *v.* Thomas

Lord Merriman, P., and Hodson, J. 18th October, 1945

Husband and wife—Desertion—Wife's withdrawal from cohabitation—Subsequent offer to return refused by husband—Whether husband a deserter.

Appeal from Lancashire justices.

The appellant husband and the respondent wife were married in January, 1944. On 12th March, 1945, the wife left the husband, alleging that he was "nagging and insulting" her. On 12th June, 1945, an interview took place concerning the household goods at which, according to the wife, she made a definite offer to return to her husband, which offer was refused. Correspondence ensued showing a dispute between the parties as to what had in fact transpired on 12th June, and the husband refused the wife's repeated offers to return except on condition that she would admit that she was lying about the interview of 12th June. The wife therefore took out this summons complaining of her husband's desertion. The justices held that the husband's refusal to resume cohabitation constituted desertion, and they awarded the wife 23s. a week maintenance. The husband appealed.

LORD MERRIMAN, P., said that counsel for the wife had conceded that the case should be decided on the basis that the causes of the wife's withdrawal from cohabitation did not justify it, since the evidence did not show sufficiently grave reasons for breaking up the marriage. Counsel for the husband conceded that, since *Pardy* v. *Pardy* [1939] P. 288, where cessation of cohabitation had taken place by mutual agreement, if that agreement came to an end resumption of cohabitation was no longer a condition precedent to a charge of desertion. To that extent *Pardy* v. *Pardy, supra*, had qualified the well-known dictum of Lord Penzance in *Fitzgerald* v. *Fitzgerald* (1869), L.R. 1, P. 694, at p. 698. The question now was whether the remainder of that dictum was to be deprived of validity by the court's holding that, where cohabitation had been ended by the adverse act of one of the parties, there, too, resumed cohabitation was not necessary to a subsequent charge of desertion. Taken literally, Lord Penzance's words, as he (Lord Merriman) had pointed out in *Jordan* v. *Jordan* [1939] P. 239, at p. 250, prevented the spouse against whom the adverse act had been committed from asserting subsequently that the other spouse was a deserter, a proposition to which he could not assent. The question here, however, was whether, assuming the wife to have left the husband without justification, she, as the party committing the adverse act, could subsequently turn the tables on her husband and put him in the position of deserter. He (his lordship) could see no logical distinction between the case of mutual agreement to cease cohabitation and the present case. If there was consensual separation, the husband was justified in remaining apart by the fact of the consent. Here, he was justified in remaining apart by the fact that his wife, without justification, had withdrawn from cohabitation. Whether the consent, or, as here, the wife's course of conduct, came to an end, the position was the same. The court was considering only the case where there was a mere separation uncomplicated by misconduct other than withdrawal from cohabitation. That the

wife could by mere repentance restore herself to a position in which her husband was bound to maintain her was established by *Jones* v. *Newtown and Llanidloes Guardians* [1920] 3 K.B. 381; see *per* Lord Reading, C.J., at p. 384. By the same process she could turn her husband into a deserter without the preliminary of a suit for restitution of conjugal rights. That was the inevitable conclusion from the judgment of Warrington, L.J., in *Thomas* v. *Thomas* [1924] P. 194, at p. 201. While the lord justice had not expressly referred to a turning of the tables, it necessarily followed from his reasoning that, if the circumstances were such that the former deserter had merely to make a genuine offer (in *Thomas* v. *Thomas*, *supra*, the circumstances were not such) to resume cohabitation in order to purge himself or herself of the desertion, its refusal by the other spouse turned him or her in turn into a deserter. The husband here had in effect refused the wife's offer to resume cohabitation, and the appeal must be dismissed.

HODSON, J., agreed.

COUNSEL: *H. C. Mortimer; Gerald Gardiner.*

SOLICITORS: *Pritchard, Englefield & Co.*, for *Sydney Haworth*, Liverpool; *Stanley Williams*, Bootle.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

Land Registry Delays

Sir,—We have been very glad to see that this matter has been raised by "The Conveyancer."

Our experience as regards delay in receiving certificates of search under the Land Charges Act has been similar to that of the various correspondents whose letters appear in your issue of the 16th March.

While the Registry's delay in dealing with these certificates of search may be unavoidable owing to shortage of staff and sudden increases in the volume of work, we fail to understand why the Registry cannot keep the legal press informed from time to time as to what delays can be expected.

About April of last year we complained to The Law Society regarding a specially important search which we had asked should be telegraphed by the Registry, and in his reply the secretary mentioned that at the last statement on the position appeared in the Society's *Gazette* for April, 1944 (twelve months earlier). We cannot recollect that any further information of this kind has appeared since that date either in the *Gazette* or in your journal.

This omission on the part of the Registry, coupled with the delays which everyone is experiencing, suggests either serious mismanagement or a complete disregard for the interests of buyers and sellers of property, whose interests we presume the department was created to serve.

Manchester, 3. WOOD, CROCKER & CO.

OBITUARY

MR. J. T. CHAMBERLAIN

Mr. James Thomas Chamberlain, solicitor, of Messrs. Hensman, Jackson & Chamberlain, solicitors, of Northampton, died on Wednesday, 6th March. He was admitted in 1893.

MR. H. MOUNTAIN

Mr. Harold Mountain, solicitor, of Messrs. Bates & Mountain, solicitors, of Great Grimsby, died on Tuesday, 12th March, aged sixty-seven. He was admitted in 1905.

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time:—

CALEDONIAN INSURANCE COMPANY BILL [H.L.]. [21st March.

EDUCATION BILL [H.C.]. [21st March.

Read Second Time:—

MISCELLANEOUS FINANCIAL PROVISIONS BILL [H.C.] [19th March.

POLICE BILL [H.C.]. [21st March.

PUBLIC WORKS LOANS BILL [H.C.]. [19th March.

Read Third Time:—

WATER (SCOTLAND) BILL [H.C.]. [20th March.

HOUSE OF COMMONS

Read First Time:—

GLASGOW CORPORATION BILL [H.C.].

To confer further police powers on the Corporation of the City of Glasgow and for other purposes. [22nd March.

INVERNESS WATER ORDER CONFIRMATION BILL [H.C.]. [21st March.

NATIONAL HEALTH SERVICE BILL [H.C.].

To provide for the establishment of a comprehensive health service for England and Wales, and for purposes connected therewith. [19th March.

Read Second Time:—

ARMY AND AIR FORCE (ANNUAL) BILL [H.C.]. [22nd March.

GREAT WESTERN RAILWAY BILL [H.C.]. [20th March.

HOUSING (FINANCIAL PROVISIONS) (SCOTLAND) BILL [H.C.]. [19th March.

LONDON NECROPOLIS BILL [H.L.]. [25th March.

Read Third Time:—

CAMBERWELL, BRISTOL AND NOTTINGHAM ELECTIONS (VALIDATION) BILL [H.C.]. [22nd March.

CONSOLIDATED FUND [No. 2] BILL [H.C.]. [25th March.

INDIA (CENTRAL GOVERNMENT AND LEGISLATURE) BILL [H.L.]. [20th March

Withdrawn:—

CHESHIRE COUNTY COUNCIL BILL [H.C.]. [20th March.

LANCASHIRE COUNTY COUNCIL BILL [H.C.]. [20th March.

NOTTINGHAMSHIRE COUNTY COUNCIL BILL [H.C.]. [20th March.

QUESTIONS TO MINISTERS

LAND REGISTRY: EXPEDITION FEE

Sir W. WAKEFIELD asked the Attorney-General if he is aware that if transfers are required to be expedited at the Land Registry, a fee of an extra guinea is demanded; and if he will take steps to stop this practice of premium payment.

The ATTORNEY-GENERAL: I am aware of the practice to which the hon. member refers. The charge of an extra fee, which is sanctioned by the relevant rules, is made for the benefit of the public, who are thus enabled to obtain quick registration in urgent cases. If no extra charge were made, many more cases would be accompanied by applications for expedition, and it would be impossible to obtain quick registration in cases where it was most urgently required. This might result on occasion, for example, in the case of a mortgage before purchase, in the frustration of the transaction. [20th March.

LEASEHOLD PRINCIPLE

Sir C. EDWARDS asked the Attorney-General if he will consider bringing in a Bill to deal with the leasehold principle which obtains in this country so as to make sure that, after payment of ground rent for an agreed number of years, it shall automatically become the freehold of the organisation or the individual who built the premises.

The ATTORNEY-GENERAL: No, sir. I do not think such a restriction on freedom of contract would be in the public interest. [20th March.

CONVEYANCING SYSTEM

Mr. BLYTON asked the Attorney-General if he will consider the methods of the Colonies in the conveyance of property and land and introduce similar legislation with a view to preventing extortionate charges by the legal profession for these matters.

The ATTORNEY-GENERAL: I do not agree that the charges made by the legal profession for the matters referred to by my hon. friend are in any way extortionate. As regards the systems of conveyancing in use in the Colonies, I would remind my hon. friend that there is a great variety of systems, some of which are based on English law whilst others have evolved out of the local law in conformity with local requirements. The system of registration of title to land has been adopted in this country as most likely to simplify conveyancing and as most suitable to prevailing conditions, and the fact that compulsory registration is at present only operating in a few areas is due to the war having retarded progress in this field. [21st March.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1946

No. 339. **Alien.** Restriction. Direction. March 11.

No. 358. **Control of Paper** (No. 74) Order. March 14.

No. 359. **Food** (Meals in Establishments) Order, March 15, amending the Meals in Establishments Order, 1942.

No. 334/S.12. **Improvement of Live Stock** (Licensing of Boars) (Scotland) Regulations. March 8.

No. 336. **India.** Reserved Posts (Other Services) Rules, 1938, Amendments. March 5.

No. 357. **Public Service Vehicles** (Conduct of Drivers, Conductors and Passengers) (Amendment) Regulations. March 15.

No. 344. **Sales by Auction and Tender** (Control) Order. March 11.
No. 335. **Trading with the Enemy** (Custodian) (Amendment) (Germany and Austria) Order. March 11.
No. 349. **Workmen's Compensation** (Industrial Diseases) Order. March 12.

STATIONERY OFFICE

Government Publications, Consolidated List for 1945.

DRAFT STATUTORY RULES AND ORDERS, 1946

Underground Water (Controlled Areas) Regulations. March 12.

[Any of the above may be obtained from the Publishing Department. S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2]

RULES AND ORDERS

S.R. & O. 1946, No. 310/L.2.

SUPREME COURT, ENGLAND.

PROCEDURE.

THE RULES OF THE SUPREME COURT (No. 1), 1946. DATED MARCH 1, 1946.

I, William Allen Baron Jowitt, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by the Administration of Justice (Emergency Provisions) Act, 1939,* and in pursuance of Section 3 of the Evidence and Powers of Attorney Act, 1940,† and Section 2 of the Evidence and Powers of Attorney Act, 1943,‡ and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules of Court under Section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925§ :—

1. The following amendments shall be made in Order XVI Rule 28B (which relates to the conduct of certain poor persons proceedings by a solicitor employed by The Law Society), namely :—

(*a*) The following paragraph shall be substituted for paragraph (1)—

"(1) Where The Law Society or a Provincial Law Society has decided, after enquiry by the Poor Persons Committee of the Society, to issue a certificate admitting a poor person to institute, defend, or be a party to a matrimonial cause, or has issued such a certificate, and the Poor Persons Committee are satisfied that—

(*a*) it is impracticable within a reasonable time to nominate a conducting solicitor for the purpose of the proceedings ; or

(*b*) in a case where a certificate has been issued, the conducting solicitor nominated for the purpose of the proceedings cannot effectively undertake or prosecute the conduct thereof ;

the Committee may nominate as conducting solicitor for the purpose of the proceedings any solicitor employed by The Law Society for the purpose of conducting matrimonial causes on behalf of poor persons."

(*b*) Paragraph (4) shall be deleted.

2. Notwithstanding anything in Order XVI Rule 31A (which provides that in matrimonial causes every pleading shall be settled by counsel) it shall not be necessary that every pleading in matrimonial causes to which a poor person is a party shall be so settled.

3. Rule 2 of the Rules of the Supreme Court (Deposit of Powers of Attorney) 1943‖ (which limits the classes of instruments to which those Rules apply to instruments creating powers of attorney executed outside the United Kingdom by members of the Armed Forces of His Majesty after the 13th June, 1940, and during the period for which the Emergency Powers (Defence) Act, 1939, is in force) shall have effect as if the words " and during the period for which the Emergency Powers (Defence) Act, 1939, is in force " were omitted therefrom.

4. These Rules may be cited as the Rules of the Supreme Court (No. 1) 1946, and shall be deemed to have come into operation on the 23rd day of February, 1946.

Dated the first day of March, 1946. *Jowitt*, C.

We concur, *Goddard*, C.J.
Merriman, P.

* 2 & 3 Geo. 6. c. 78. † 3 & 4 Geo. 6. c. 28. ‡ 6 & 7 Geo. 6. c. 18.
§ 15 & 16 Geo. 5. c. 49. ‖ S.R. & O. 1943 (No. 1082) I, p. 923.

NOTES AND NEWS

Honours and Appointments

The Colonial Legal Service announce the following appointments : Mr. P. MACRORY to be Crown Counsel, Kenya ; and Mr. H. G. SHERRIN to be Resident Magistrate, Kenya.

Mr. SWINBURN JAMES WILSON, solicitor, of Newcastle-on-Tyne, and Under Sheriff of the city, has been appointed Clerk to the West Castle Ward (Northumberland) Magistrates. Mr. Wilson is a former adjutant of the No. 43 Fighter Squadron, R.A.F., and was mentioned in despatches in 1942. He was admitted in 1936.

Mr. H. G. FROST, solicitor, of Boston, Lincs, has been appointed Clerk to the Boston Magistrates. He was admitted in 1934.

Notes

Mr. Herbert Morrison announced in the House of Commons on the 21st March that the Chancellor of the Exchequer would open his Budget on Tuesday, 9th April next.

Miss Edith Hesling, barrister-at-law, deputised for His Hon. Judge Batt at the Macclesfield County Court recently. It is believed to be the first time a woman has presided at a County Court.

THE UNION SOCIETY OF LONDON

The following debates will be held during April in the Barristers' Refreshment Room, Lincoln's Inn, at 8 p.m :—

Wednesday, 3rd April : " That all the secrets of atomic energy should be immediately disclosed to the United Nations."

Wednesday, 10th April : " That the time has arrived for the abolition of conscription into the armed forces."

Wednesday, 17th April : " That there is no justification for interfering with the existing regime in Spain."

Further information may be had from the hon. secretary, Mr. Eric Moses, 7 New Square, Lincoln's Inn, W.C.2 (Tel. : Holborn 1266).

CHANCERY DIVISION

The following explanatory Memorandum has been issued by the Judges of this Division to remove some misapprehensions about the differences between their sittings in court and in chambers respectively :—

1. The Judge sits either in Court or in Chambers ; there is no intermediate or other kind of sitting.

2. When he sits " in Chambers " (whether in his Court or in his private room) the hearing is invariably within closed doors and only the interested parties (or such of them as the Judge thinks proper to admit) are entitled to be present. Counsel are not required to be in robes, unless in a particular case the Judge otherwise directs.

3. There is no such thing as an " open " sitting in Chambers, but if at any stage of the hearing (e.g., for the delivery of his judgment) the Judge thinks it proper that the further proceedings should be in public he will adjourn the hearing into Court.

4. When the Judge sits " in Court " the hearing is in public, and Counsel must attend in robes. The only circumstance in which the public may be excluded from the hearing of a case in Court is when in the opinion of the Judge publicity is likely to defeat the ends of justice, e.g., where a secret process has to be disclosed or the affairs of an infant have to be discussed. When such exclusion is ordered, the hearing although " in Court " is said to be " *in camera.*"

5. Normally at every sitting in Chambers the Judge is attended by the Master, and at every sitting in Court by the Registrar. The Judge may, however, require the attendance of the Registrar (either in addition to or in place of the Master) at a sitting in Chambers, or of the Master (in addition to the Registrar) at a sitting in Court if he considers such attendance to be desirable.

6. The expression " in Court as Chambers " is misleading and should not be used. It has only meant that the sitting in Chambers is to be held in the Judge's Court and not in his private room.

7. When a sitting of the Judge in Chambers is announced in the Cause List, the name of the Master ought usually to be mentioned. The omission of such name indicates that the Judge has directed that the Registrar is to attend in the Master's place.

A. H. HOLLAND,
15th March, 1946. Chief Master

COURT PAPERS

SUPREME COURT OF JUDICATURE

HILARY SITTINGS, 1946

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.			Emergency Rota.	Appeal Court I.	Mr. Justice Uthwatt.
Mon.,	Apl.	1	Mr. Jones	Mr. Blaker	Mr. Andrews
Tues.,	,,	2	Reader	Andrews	Jones
Wed.,	,,	3	Hay	Jones	Reader
Thurs.,	,,	4	Farr	Reader	Hay
Fri.,	,,	5	Blaker	Hay	Farr
Sat.,	,,	6	Andrews	Farr	Blaker

Date.			Group A. Mr. Justice Cohen. *Witness.*	Mr. Justice Vaisey. *Non-Witness.*	Group B. Mr. Justice Evershed. *Non-Witness.*	Mr. Justice Romer. *Witness.*
Mon.,	Apl.	1	Mr. Hay	Mr. Farr	Mr. Reader	Mr. Jones
Tues.,	,,	2	Farr	Blaker	Hay	Reader
Wed.,	,,	3	Blaker	Andrews	Farr	Hay
Thurs.,	,,	4	Andrews	Jones	Blaker	Farr
Fri.,	,,	5	Jones	Reader	Andrews	Blaker
Sat.,	,,	6	Reader	Hay	Jones	Andrews